

RECORDATION NO. 11934-C FILED 1988

JUL 5 1988 - 11 34 AM

ITEL

July 1, 1988

Istel Rail Corporation INTERSTATE COMMERCE COMMISSION

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

No.
JUL 5 1988
Date.....
Fee \$ 13.00

Hon. Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

8-187A032

ICC Washington, D. C

Re: Amendment No. 2 dated June 15, 1988, to the Lease Agreement dated June 17, 1980, between Itel Corporation, Rail Division, and Grand Trunk Western Railroad Company

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Amendment under the Lease Agreement dated June 17, 1980, between Itel Corporation, Rail Division, and Grand Trunk Western Railroad Company, which was filed with the ICC on June 20, 1980, under Recordation No. 11934.

The parties to the aforementioned instrument are listed below:

Istel Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Grand Trunk Western Railroad Company (Lessee)
131 West Lafayette Boulevard
Detroit, Michigan 48226

This Amendment amends, among other things described therein, the lease term with respect to two hundred (200) 100-ton steel gondolas bearing reporting marks 148000-148199.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

patricia schumacker

Patricia Schumacker
Legal Department

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AMENDMENT NO. 2JUL 5 1988 - 11 ³⁰ AM

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 2 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of June 17, 1980, as amended, between ITEL Corporation, Rail Division and GRAND TRUNK WESTERN RAILROAD COMPANY ("Lessee") is made this 15th day of June, 1988, by and between ITEL RAIL CORPORATION, as successor in interest to ITEL Corporation, Rail Division ("Lessor") and Lessee.

R E C I T A L S:

- A. Lessor and Lessee are parties to the Agreement, pursuant to which two hundred (200) 100-ton steel gondolas (the "Cars") have been leased by Lessor to Lessee.
- B. Lessor and Lessee desire to amend the terms of the Agreement with respect to the Cars.

NOW, THEREFORE, the parties hereto agree to amend the agreement as follows:

1. All terms defined in the Agreement shall have their defined meanings when used in this Amendment.
2. This Amendment shall be effective on June 1, 1988.
3. Section 2 of the Agreement shall be deleted and replaced by new Section 2 as follows:

"2. Term

The term of the Agreement with respect to each Car described on Equipment Schedule No. 1 shall be for five (5) years commencing on June 1, 1988."

4. The original Section 3 of the Agreement shall become Subsection 3.A., and a new Subsection 3.B. shall be added, as follows:

"3.B. During the term of this Agreement, Lessor may, at its expense, replace any or all of the Cars with similar rail cars upon prior written notice from Lessor to Lessee; provided, however, that any such replacement shall not prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor."

5. Subsection 5.B. of the Agreement shall be deleted and replaced by the following:

"5.B.(i) Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules, provided,

THIS INSTRUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF HELLER FINANCIAL, INC. UNDER THE HELLER FINANCIAL, INC. LOAN AND SECURITY AGREEMENT WITH ITEL RAIL CORPORATION DATED AS OF SEPTEMBER 30, 1986.

however, that such repair, maintenance and servicing shall be performed at Lessee's expense in the event it was occasioned (i) by damage or other condition caused by negligence of Lessee or anyone other than Lessor; (ii) by damage or other condition caused by loading, unloading or use other than as permitted under this Agreement; (iii) to repair, replace or maintain interior lading equipment, special interiors and linings and removable parts in good, safe operating condition; (iv) by loss or damage resulting from any commodity or other material loaded in or on any Car. Any transportation costs incurred by reason of movement of the Cars for any maintenance provided for in this paragraph shall be at Lessee's sole expense. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange Lessee shall use its best efforts to minimize any damage to the Cars which may be caused by any shipper. Lessee shall not place any Car into a private contract repair facility or have any Car repaired by a private contractor on Lessee's lines unless Lessee has received prior approval from Lessor and all such repairs are performed under the direction and control of Lessor. With respect to the Cars, any repairs performed by Lessee at Lessor's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties hereto.

- (ii) Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Lessee may make running repairs to those parts of the Cars specified on Exhibit A attached hereto so as to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any alteration, improvement or addition made, whether or not authorized, shall be and remain with Lessor. Should the AAR Mechanical Department inspect or investigate Lessee's facilities and determine that restitution is due owners of railcars repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to AAR Rule 120 for all railcars owned or managed by Lessor, including the Cars, that were repaired at Lessee's facilities. Lessor shall have the right to perform certain Repairs, as hereinafter defined, to the Cars at a location on Lessee's property which is mutually agreeable to Lessor and Lessee. Repairs ("Repairs") shall be of a type that Lessor determines Lessee would not normally perform or of a type that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Repairs."

6. Section 6 of the Agreement shall be deleted and replaced by the following:

"Rent

A.

subject to adjustment as provided hereinbelow. Lessee shall pay all sums due hereunder to Lessor in immediately available United States funds at the address provided in the Agreement, or such other place as Lessor may direct. Rental payments for any Month shall be made monthly in advance or on the first day of such Month during the term of the Agreement. All taxes reimbursable to Lessor pursuant to Subsection 5.D. shall be additional rental hereunder.

B.

The monthly rental provided in Subsection 6.A. has been calculated using the AAR Labor Rate in effect on the date of Amendment No. 2 to the Agreement ('Original Labor Rate'). The Labor Rate in effect on each subsequent January 1 will be referred to as the Current Labor Rate. If the Current Labor Rate established and in effect upon the expiration of January 1 of each subsequent year from and after the date of Amendment No. 2 shall change from the Original Labor Rate, the monthly rental shall be adjusted by adding to such monthly rental the product obtained by multiplying such monthly rental by a fraction, the numerator of which is the Current Labor Rate and the denominator of which is the Original Labor Rate. Any such adjustment shall be instituted by notice from Lessor to Lessee and shall take effect with respect to rents coming due subsequent to the date of notice.

C.

In the event destruction or damage beyond repair of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Car Hire Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations- Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date car hire ceases as set forth in the aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Lessee.

D.

If any Car, while in Lessee's possession, is damaged to the extent that such damage exceeds the AAR Depreciated Value ('DV') for such Car, Lessee shall notify Lessor within thirty (30) days following the date of the occurrence of such damage ('Damage Date'). If Lessee fails to notify Lessor within thirty (30) days of the Damage Date, Lessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Lessor.

- E. Except for the normal interchange and customer assignment pools customary in the railroad industry, Lessee shall not enter into any agreement with any other party with respect to the Car ('Third Party Agreement(s)') without Lessor's prior written approval.
- F. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 6."
7. Subsection 7.A. shall be deleted and replaced by the following:
- "A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent the Cars are customarily used in the railroad freight business. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement pursuant to which Lessor's obligations thereunder are or become secured by the Cars which are the subject of this Agreement. Accordingly, following notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party."
8. New Subsections 7.C. and 7.D. shall be added to Section 7 of the Agreement, as follows:
- "C. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts; rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.
- D. The use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of a rail common carrier. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. During the term of this Agreement, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER."

9. Section 9 of the Agreement shall be deleted and replaced by the following:

"9. Expiration or Termination

Upon the expiration or termination of this Agreement with respect to any Car, Lessee shall, at Lessor's expense, place such reporting marks and numbers on any or all of the Cars as Lessor shall designate in writing to Lessee and surrender possession of such Car to Lessor by delivering same to Lessor at any point on Lessee's line agreed upon by Lessor and Lessee. Each Car so surrendered shall be in the same order and repair as when delivered to Lessee, ordinary wear excepted, and shall be substantially free of all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. Until the delivery of possession of the Cars to Lessor pursuant to this Section 9, Lessee shall continue to be liable for and shall pay all rental at the rate in effect immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Agreement as though such termination or expiration had not occurred. Lessee agrees to provide storage at its expense, upon the request of Lessor, for any or all of the Cars for sixty (60) days from the date of expiration or termination of this Agreement. Nothing in this Section 9 shall give Lessee the right to retain possession of any Car after expiration or termination of this Agreement with respect to such Car."

10. Section 10 of the Agreement shall be deleted and replaced by the following:

"10. Indemnities

- A. Lessee shall defend, indemnify and hold Lessor harmless from and against any loss, damage, destruction or liability with respect to the Cars which is occasioned by the fault of Lessee, or which occurs while the Cars are in Lessee's possession or control, or in those instances in which the Interchange Rules would assign responsibility for such loss, damage, destruction, or liability to Lessee.
- B. Except as provided in Subsection 10.A., and except for those claims, causes of action, damages, liabilities, costs or expenses for which Lessee shall be responsible as set forth in this Agreement, Lessor shall defend, indemnify and hold Lessee harmless against any and all loss, damage or destruction of or to the Cars, usual wear and tear excepted, and any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars."

11. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect.

12. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

GRAND TRUNK WESTERN RAILROAD COMPANY

Name: AD Hayes
Title: President
Date: June 15, 1988

Name: P. Z. Intu
Title: SR. VICE PRESIDENT FINANCE
Date: JUNE 9, 1988

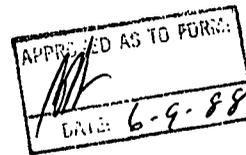


EXHIBIT A
Gondolas

Running Repairs

Angle Cocks

Air Hose

Train Line

Operating Levers and
Brackets

Sill Steps

Grab Irons

Brake Shoes

Brake Shoe Keys

Brake Connecting Pin

Brake Head Wear Plates

Air Brakes

Hand Brakes

Brake Beams and Levers

Truck Springs

Running Repairs Continued

Wheels

Yokes

Knuckles/Pins

Slack Adjuster

Couplers

Draft Gears

Coupler Carriers

Center Plates (Not
Replacement)

Cotter Keys

Roller Bearing Adapters

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 14th day of June, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Amendment No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



STATE OF MICHIGAN)
) ss:
COUNTY OF WAYNE)

On this 9th day of June, 1988, before me personally appeared P. E. Tatro, to me personally known, who being by me duly sworn says that such person is Senior V.P. Finance of Grand Trunk Western Railroad Company, that the foregoing Amendment No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Thomas J. Rigley
Notary Public
THOMAS J. RIGLEY
Notary Public, Oakland County, Mich.
Acting In Wayne County
My Commission Expires Jan. 30, 1990